Strengthening the Deliberative Function of the Regular Committee on Agriculture

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Introduction

As this note goes to press, governments have failed to translate last year’s Bali deal into legal instruments in Geneva. This work serves as a reminder, both of the fragility of agreements, as yet unrealized, and of the WTO’s reliance on specialized committees and their deliberations. These recent events strengthen the case for pressing ahead with the work of the regular Committee on Agriculture (CoA), since it remains a constant fixture of the WTO’s institutional architecture, regardless of the status of negotiations.

Members have tried to realize the promise of the Doha Round for more than a decade. After its 2001 launch, representatives in Geneva focused on the Special Session of the Committee on Agriculture, due to its role in reaching negotiating outcomes. The regular Committee’s monitoring of the implementation of the Agreement on Agriculture (AoA), through notifications and other submissions, took a back seat as countries tabled competing proposals on the rules governing international agricultural trade. Notifications often came years after they were due, if at all. As a result, members lost opportunities to consult on the implementation of their commitments under the AoA. This likely unintended trade-off may have been the right one for members with limited capacity, simultaneously negotiating on several fronts. As the work of the Special Session has stalled in the years following the 2008 impasse, the case for focusing on what can be accomplished today in the CoA has rarely been stronger.

1. Bali onwards

The ministerial decisions at Bali gave impetus to the WTO, especially for work on agriculture. Ministers agreed that the CoA would monitor and consult on tariff-rate quota underfill, public stockholding for food security purposes, and export competition, among other issues. In the days since Bali, members have made substantial, if insufficient, progress. Members have tabled proposals under the Special Session; however, in the long term, the Committee on Agriculture is how and where the Bali decisions will be monitored and implemented, since the AoA is within its remit.

Last December’s Ministerial Decision cannot be described as momentous or ambitious in scope, but it deserves recognition for bringing long-running issues to the fore: tariff-rate quota (TRQ) underfill and export competition, as well as emerging concern from developing country members who are increasingly likely to spend more on domestic support through public stockholding. Tariff-rate quotas, a tool from the Uruguay Round to convert quantitative restrictions on imports into ad valorem terms, have long been criticized by trade economists as being inefficiently administered, and a fix has been in the wings. Similarly, in 2005, Ministers promised to eliminate export subsidies, perhaps the most

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1 This is addressed in better detail by Timothy Josling’s piece in this volume.

2 Skully 1999.
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trade-distorting form of support, by 2013.³ Both of these issues are unambiguously overdue. Public stockholding emerged as a pressing concern ahead of Bali, but members were far from a consensus before they reached the Indonesian island. The common thread in all of these issues is that the monitoring function of the CoA is critical both to finding compromises and to putting solutions into place. These are not tasks to negotiate in the Special Session or outside of the realm of the AoA.

A report from the WTO Secretariat in May 2014 showed that 43 per cent of notifications that Members were obliged to make between 1995 and 2012 are still outstanding.⁴ It is clearly difficult to find solutions for problems when there is a lack of information. This problem similarly reared its head long before Bali when a questionnaire among members on their food stockholding programmes was only answered by a minority. Of the notifications mentioned above, the bulk of missing submissions are on export subsidies and domestic support, both areas that are essential in addressing the Bali work programme. The absence of information likely made progress difficult for members over the course of the year, culminating in the 31 July failure to move forward with the Trade Facilitation Agreement. An important caveat worth mentioning here is that, since the collapse of Doha Round talks in 2008, the number of years notified by members and their frequency has increased dramatically, perhaps not unsurprisingly to pre-2002 levels.⁵

When members return to the bargaining table, they will need to work towards addressing the Bali work programme, especially where it concerns public stockholding, before their deadline of the next Ministerial. A June 2014 report from the CoA Chair noted progress on the methodology of notifying TRQs and expectations for new proposals on public stockholding.⁶ However, before they can get much further, they will need more information from Members. The Bali Ministerial and associated work programme are but one recent facet of the Committee and its discrete assignments serve as a reminder of the Committee's potential.

2. The role of the Committee on Agriculture

The mandate of the CoA is both simultaneously precisely defined and subject to a degree of interpretation. A 1995 decision by the General Council,⁷ the WTO’s highest-level decision-making body in Geneva, defined the CoA’s terms of reference rather simply:

“The Committee shall oversee the implementation of the Agreement on Agriculture. The Committee shall afford members the opportunity of consulting on any matter relating to the implementation of the provisions of the Agreement.”⁸

The CoA should therefore be a place where WTO members are able to consult with others on all facets of the AoA. As a place where they can consult, it may not have the ability to adjudicate, but it should help participants understand their respective challenges. Debates about the creation of the body at

3  WTO 2005.
4  WTO 2014a.
5  WTO 2014a.
6  WTO 2014b.
7  WTO 2014.
8  WTO 1995.
the Preparatory Committee of the WTO in 1994, which also created the CoA, were about unresolved questions left over from the Uruguay Round. Members, however, reached consensus on the language above, with the hope, it seems, to “get off to a good and practical start.” This language should signify that the CoA is what members make of it, like so much of the practicality inherent in the WTO.

The worth of nearly any body of law is determined by how much it is adhered to or the degree of its enforceability. The AoA remains one of the most important legal documents in setting the boundaries of the shape of agricultural policies in 160 countries. The WTO’s dispute settlement processes offer a tried and tested means of ensuring compliance. However, by the time countries reach a decision in a dispute, time and funds have already been expended. The CoA affords a place where members may air their concerns, openly, well ahead of such processes. The existing mandate of the body, coupled with discrete tasks, such as those assigned at Bali, offer glimpses at the possibilities within the Committee.

3. Considerations from other bodies and next steps

Examples of change from other bodies of global governance could be instructive for the CoA. This is reviewed in detail in Ahmad (2011), but should be mentioned again here as an update. At the height of the food price spikes in 2008, governments acted quickly to deliver humanitarian relief, but the international architecture for food and agriculture was insufficiently equipped to deal with the structural shift from a demand- to the supply-constrained world that was afoot. As in responses to earlier crises, governments sought to create, re-equip or reform existing bodies to suit immediate needs. The UN Secretary General created the High Level Task Force (UNHLTF) on the Global Food Security Crisis, the FAO and other Rome-based food agencies revitalized a nearly defunct Committee on World Food Security (CFS), and other similar efforts took place in smaller bodies. We have now had several years to learn from these efforts and others.

The UNHLTF, after coordinating the UN agency response through a common framework for action, has now stepped out of the limelight. The CFS is emerging as the premier forum for the discussion of food security. Its most recent negotiations, on Responsible Agricultural Investment, treated states, civil society and the private sector as near equals to draft a set of voluntary principles that may potentially inform future norms in this area – putative "soft" law. Unfortunately, neither of these efforts carries the legal firepower of the WTO. Therefore, a point of comparison and recommendation has been the Human Rights Council, with its Universal Period Review, and, to a degree, the Trade Policy Review mechanism at the WTO. The former has limited legal weight, as does the latter, to a degree. The operative power of all the bodies mentioned rests in their ability to shed light on a specific issue and to persuade the offending party into compliance. The respective review processes are a daunting task to discharge and require significant financial and political commitment. A similar process reviewing trade and food security is still worth considering for a strengthened CoA but is perhaps too lofty a goal at this stage.

Alternative recommendations could be more earth-bound. Perhaps unbeknownst to Ministers, Bali offers an unusually optimistic path ahead. The CoA already has a mandate as a consultative and implementation-oriented forum. The built-in agendas of the AoA and the Doha Round offer detailed instructions on the direction of reform. Fundamentally, the following elements are still needed:
• Further reform – reductions in current bound levels of support and protection;

• Expanding scope – creating new disciplines to respond to current challenges;

• Clarifying disciplines – looking over current rules to see if they are uniformly and universally applied as intended during the Uruguay Round, and making clarifications of an interpretive nature where desired.\textsuperscript{10}

The manner in which Member States are motivated to tackle these elements as well as newer issues has been, in many ways, the stumbling block of Rue de Lausanne’s most staid institution. The peace clause offered to developing countries in Bali, possibly in breach of their Aggregate Measure of Support commitments, was premised on transparency, accountability and the express authorization to and of the CoA. If Member States are likely to exceed their limits they must: (a) have notified the CoA; (b) fulfil domestic support notification requirements; (c) provide additional information on their stockholding programme; and (d) provide additional statistical information. In addition, the stocks should not distort trade or adversely affect the food security of other members.\textsuperscript{11}

In simpler terms, if a Member would like to violate WTO rules to address food security needs, then it must consult with other members, provide a large amount of information, give advance notice that it is likely to do so, and ensure that trade is not distorted or food security undermined. This rather straightforward set of conditions could allow countries to break the letter but not the spirit of WTO rules. Everything would be monitored and implemented through existing bodies and rules, which would likely encourage compliance with notification requirements. Extending this principle further, within the amble of the Agreement of Agriculture, could allow the WTO to move forward, strengthen the Committee on Agriculture and tackle trade and food security, while avoiding being mired in the political trade-offs that come with multilateral negotiations.

The AoA’s three pillars – market access, domestic support and export subsidies – cover the gambit of agricultural trade policies by definition. If the CoA is able to better monitor its implementation and enforcement, then global trade and food security could benefit from it. So much of its work is seemingly routine and unimaginative but could easily be extended to under-addressed needs, such as clarifying disciplines.

4. The way forward

There are three issues:

• Meeting the obligation to notify timely;

• The availability of data;

• A valid basis for challenging any data.

When it comes to meeting the timely notifications, the WTO Secretariat can play a role. At least three months before any meeting of the Committee is scheduled, the Secretariat should remind the

\textsuperscript{10} Ahmad 2011.

\textsuperscript{11} WTO 2013.
relevant members of their obligation. A month before the start of the meeting of the Committee, the Secretariat should circulate a paper giving the status of notifications.

When it comes to the availability of data and advice on the validity of any claims regarding a threat to food security in any country, assistance could be sought from the Food and Agriculture Organization to the United Nations. The WTO and the FAO have collaborated on several agriculture-related issues in the past, and this would further enhance their partnership.

The other Ministerial decision relating to “tariff quota administration”—how a specific type of import quota (a “tariff quota” where volumes inside the quota have a lower duty) is to be handled when the quota is persistently under-filled—may not pose a similar level of difficulties. However, the way forward suggested for public stockholding could also apply in this case.
References


